

Who May Get Involved in Conservation Easement Management Matters?



A Consideration for Amendment of Pre-June 2001 Easements

Occasionally a land trust will seek to amend a conservation easement. More often, the owners of land subject to an easement will ask for an amendment. In any case, the issue of who can insert themselves into easement management matters can be a compelling reason for the parties to agree to an amendment if the easement was created in Pennsylvania prior to June 22, 2001.

Many People May Challenge Management Decisions Regarding Older Easements

Any person in the vicinity of land under conservation easement, whether or not they are specifically identified as a beneficiary of the easement's restrictions, **could have rights to enforce the restrictions** if a court finds that they are one of the class of persons intended to be benefitted by the restrictions. (This is due to the 1956 *Pennsylvania Superior Court* decision [Appeal of J.C. Grille](#), which expanded the universe of persons who can claim to be beneficiaries of a restrictive covenant.)

For conservation easements created under Pennsylvania's common law, the norm **prior to June 22, 2001**, this presents administrative nightmares in waiting: each member of a poorly defined group of beneficiaries may challenge an easement holder's easement management decisions. For example, an objector might challenge a holder's decision to:

- Permit landowners to construct a building or use the land for matters that are subject to the holder's review and approval to ensure no harm is done to the natural or scenic values protected by the easement; or
- Amend a conservation easement to resolve a situation where the holder and landowners agree that there is a better way to achieve certain conservation results than was originally contemplated and prescribed when the easement was established decades before.

More Is Better?

One might think that having more people able to enforce a conservation easement's covenants is a positive thing: the more people that can watch out for inappropriate activities on conserved land and challenge those activities if the easement holder fails to do so, the better for conservation. However, in the real world, more harm than good comes to conservation. It can also cause undue problems for landowners.

Focus on Conservation in the Public Interest

The staff and volunteers of land trusts—the holders of conservation easements—typically devote tremendous time and energy to thoughtfully conserving land. They engage in regular training on how to optimize conservation while respecting the rights and interests of the landowners subject to easement restrictions and other easement matters. They are focused on conservation in the public interest, and their interpretation of the easement document is grounded by that focus.

Personal Interests

Neighbors and other persons in the vicinity of the conserved land—in contrast—may be strongly motivated by highly personal agendas. They may challenge an easement holder's management not because the holder's decisions are detrimental to conservation in the public interest but rather because those decisions

are detrimental to the neighbor's private interests. For example:

The owner of eased land proposes constructing a building, an action that is subject to the easement holder's review and approval. After careful evaluation of the facts, the land trust judges the construction to be permitted because, among other reasons, the structure will not harm the scenic qualities of the land as viewed from public rights-of-way and the local public park.

However, the matter does not end there. The structure would be visible from a neighbor's deck, and the neighbor is determined to prevent any perceived harm to their private retreat. The neighbor sues to block construction from proceeding, arguing that the easement holder reached the wrong conclusion in its evaluation.

A person might also interfere with easement management as a way of exercising a grievance against their neighbor that is utterly unrelated to the easement management matters in question.

Problem Partially Resolved in 2001

Governor Ridge signed Pennsylvania's [Conservation and Preservation Easements Act](#) (P.L. 390, No. 29) into law on June 22, 2001. The Act's authors included a specific provision to address the problem of people interfering with the administration of restrictive covenants for their own private interests. **Section 5(a) of the law limits the universe of those who have standing to bring legal or equitable actions affecting a conservation easement** to the landowners, the easement holder, a person that has an interest or right or holds an estate in the real property, a person *named in the easement* having a third-party right of enforcement, a person otherwise authorized by federal or state law, and the owner of a coal interest.

Taking Advantage of the Act

Conservation easements that were created after June 22, 2001, and which conform to the Act's requirements, enjoy this narrowing of the universe of persons who can be involved with easement management. However, **for an easement pre-dating the Act, the easement holder and landowners must agree to an easement amendment if they are to ensure that the easement benefits from this narrowing.**

Resources

Many guides regarding conservation easements can be found at WeConservePA.org.



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